

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

LAURA FUJISAWA, et al.)	No. C07-5642 BZ
)	
Plaintiff(s),)	Related Cases: C07-3431 BZ
)	C08-4118 BZ
v.)	C09-2016 BZ
)	
COMPASS VISION, INC., et)	
al.,)	ORDER DENYING STATE OF
)	CALIFORNIA'S MOTION TO SEAL
)	
Defendant(s).)	
)	

The motion of the non-party, California Department of Consumer Affairs (Department) to require that some of the exhibits and testimony at this trial be sealed is **DENIED** for the following reasons:

1. The application is untimely. This issue surfaced in August yet the Department waited until the eve of trial to file its motion, requiring the trial to begin before the motion could be considered.¹

¹ When this issue first arose, the Court suggested that the Department meet and confer with the parties in an effort to eliminate redacted portions of exhibits that the Department wanted to seal. Rather than attempting to do this, the

1 2. The application does not comply with Local Rule
2 79-5 and governing case law. In particular, no declaration
3 was filed establishing the harm to the Department should this
4 evidence be in the public record. Instead, a memorandum
5 containing conclusory statements was filed notwithstanding
6 the Court's prior admonition to the Department that an effort
7 to seal testimony and exhibits at a public trial in federal
8 court would require a substantial showing of harm to the
9 Department if the exhibits and testimony were to remain
10 public. The Court has reviewed many of the portions of
11 exhibits which the Department seeks to seal and has concluded
12 that the potential harm to the Department is minimal or
13 non-existent.

14 3. The minimal need for confidentiality is outweighed
15 by the inconvenience and disruption to the parties if, every
16 time a question were asked about the workings of the recovery
17 program, the trial had to be stopped, and the courtroom
18 cleared. Nor has movant cited any authority for the
19 proposition that jurors are obligated to maintain the
20 confidentiality of the testimony and exhibits at trial.

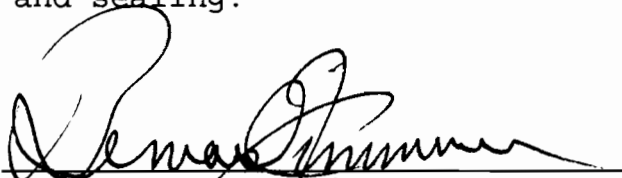
21 4. Maintaining the degree of confidentiality and
22 sealing that movant desires would undermine the Court's
23 management of this litigation which has permitted Dr.
24 Fujisawa to proceed as a lead plaintiff. The Court's goal is
25 that this trial serve as a template for resolving the claims
26 of the many other plaintiffs which involve these same issues;

27 _____
28 Department filed this untimely motion.

1 a goal which would not be helped if portions of the trial are
2 under seal.

3 That said, at the conclusion of the trial, the
4 Department may review the exhibits that actually went into
5 evidence and, if it cares to, the transcript, and file a
6 motion in compliance with Local Rule 79-5 to seal narrowly
7 tailored portions of the exhibits and the transcript as to
8 which the Department can make the required showing of the
9 need for confidentiality and sealing.

10 Dated: December 6, 2010

11 
12 Bernhard Zimmerman
13 United States Magistrate Judge

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